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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. .....

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
Petitioner,

vs.

BENCHCRAFT, INC., DELIVERY, INC., and CAPITOL TRUCK LINES, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner, The Atchison, Topeka & Santa Fe Railway Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above cause on September 30, 1974.

OPINIONS BELOW

The opinion of the District Court for the Western District of Missouri is reported in 381 F. Supp. 603 and the *per curiam* opinion of the Court of Appeals for the Eighth Circuit is reported in 503 F.2d 560. The opinion of the Court of Appeals is in the Appendix at p. A5, and the opinion of the District Court is in the Appendix at p. A1.

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was made and entered on September 30, 1974. Petition for rehearing was denied October 16, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether a common carrier is compelled by the three year statute of limitations contained in 49 U.S.C. 16(3) to sue for demurrage charges within three years of delivering the semi-trailer but before the total charges can be ascertained.

STATUTE INVOLVED

The statute involved is a section of the Interstate Commerce Act, 49 U.S.C. 16(3), which provides:

> "§16, par. (3). *Limitation of actions.* (a) All actions at law by carriers subject to this chapter for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.
>
> "(b) All complaints against carriers subject to this chapter for the recovery of damages not based on overcharges shall be filed with the commission within two years from the time the cause of action accrues, and not after, subject to subdivision (d) of this paragraph.

"(c) For recovery of overcharges action at law shall be begun or complaint filed with the commission against carriers subject to this chapter within three years from the time the cause of action accrues, and not after, subject to subdivision (d) of this paragraph, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

"(d) If on or before expiration of the two-year period of limitation in subdivision (b) of this paragraph or of the three-year period of limitation in subdivision (c) of this paragraph a carrier subject to this chapter begins action under subdivision (a) of this paragraph for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

"(e) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

"(f) A complaint for the enforcement of an order of the commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

"(g) The term 'overcharges' as used in this section shall be deemed to mean charges for transportation

services in excess of those applicable thereto under the tariffs lawfully on file with the commission.

"(h) The provisions of this paragraph shall extend to and embrace cases in which the cause of action accrued prior to June 7, 1924, as well as cases in which the cause of action accrues thereafter, except that actions at law begun or complaints filed with the commission against carriers subject to this chapter for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c) of this paragraph if such actions shall have been begun or complaints filed prior to June 7, 1924, or within six months thereafter.

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this chapter: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for over-payment of such charges, or (C) deduction made under section 65 of this title, whichever is later."

STATEMENT OF THE CASE

The facts are not in dispute. Petitioner, a common carrier by rail, brought this action to recover $19,455.24 demurrage charges, plus interest, against respondent Benchcraft, Inc. Because petitioner's cause of action arises

under a federal statute regulating commerce (the Interstate Commerce Act, 49 U.S.C. 1 *et seq.*), federal jurisdiction was conferred upon the District Court by 28 U.S.C. 1331 and 1337. Respondent Benchcraft, Inc., was the designated consignee of two semi-trailers of freight moving from Canton, Ohio to Kansas City, Missouri, in part over petitioner's railroad. The trailers were numbered NWZ209790 and ELZZ202044. The trailers were owned by two other railroads. Both trailers were delivered by petitioner to respondent, Benchcraft, Inc., on May 2, 1969. Trailer NWZ was released and returned to petitioner on either November 2 or November 7, 1972, at which time the complaint alleges that demurrage in the amount of $14,268.66 was due. Trailer ELZZ was released and returned to its owner on August 5, 1970, at which time the complaint alleges $5,186.53 was due. This action was commenced on August 3, 1973, more than three years after the trailers were delivered to respondent, Benchcraft, Inc., but less than three years after they were released and returned to petitioner or the owner in the case of trailer NWZ or the owner thereof in the case of trailer ELZZ.

Respondents, Delivery, Inc. and Capitol Truck Lines, Inc., were joined as third party defendants by respondent, Benchcraft, Inc., and petitioner has asserted no claim against these respondents.

Western Trunk Lines Freight Tariff 453-E is applicable because it establishes the amount of the demurrage charge and the length of "Free Time." Items 260 and 270 deal with detention of vehicles and are entitled "Free Time" and "Charges" respectively. These two items are set out in the Appendix at pp. A7-A8.

"Free Time" is that period of time after delivery of the trailer during which the consignee may retain posses-

sion of the trailer and not pay demurrage. This is to permit unloading of the trailer. The amount of free time will vary with the time of day and day of the week when the trailer is delivered. See Item 260 in the Appendix at pp. A7-A8.

Item 270 prescribes a schedule of demurrage charges which are assessed for detention of the trailer after free time expires. The amount increases with the length of post free time detention. See Item 270 in the Appendix at p. A8.

The respondents filed a joint motion in the District Court for summary judgment asserting that petitioner's cause of action was barred by the statute of limitations contained in 49 U.S.C. 16(3)(a). It was their contention that petitioner's suit for demurrage was one involving a "shipment in respect of property" within the scope of 49 U.S.C. 16(3)(e); that petitioner's cause of action for demurrage accrued and the statute of limitations began to run when the trailers were delivered and that the action was barred, because it was commenced more than three years after the trailers were delivered to respondent Benchcraft, Inc.

Petitioner conceded that a suit for demurrage was subject to the three year statute of limitations in 49 U.S.C. 16(3)(a) but contended that it was not a cause of action in respect of a shipment of property within the scope of 49 U.S.C. 16(3)(e); that therefore petitioner's cause of action did not accrue and the statute of limitations did not begin to run when the trailers were delivered to respondent, Benchcraft, Inc.; but instead that the cause of action did not accrue until the trailers were released by respondent Benchcraft, Inc.; and that the action was not barred because it had been commenced within three years of the date the trailers were released.

The District Court sustained the motion and granted summary judgment in favor of all three respondents and petitioner appealed to the United States Court of Appeals for the Eighth Circuit. That court affirmed in a *per curiam* opinion holding that the District Judge had accurately stated the applicable law and had properly applied the law to the facts. Petitioner's petition for rehearing in the United States Court of Appeals for the Eighth Circuit was denied on the 16th day of October, 1974.

Under these undisputed facts is petitioner's suit for demurrage barred by the statute of limitations because it was commenced more than three years after the trailers were delivered to respondent Benchcraft, Inc.? Or is the suit still viable because it was commenced less than three years after respondent released the trailers? Is a demurrage suit by a carrier one in respect of a shipment of property within the scope of §16(3)(e) of Title 49, U.S.C.; or is it not?

REASONS FOR GRANTING THE WRIT

The decision of the court below should be reviewed by this Court because:

1. The decision of the United States Court of Appeals for the Eighth Circuit raises an important question of federal law and is illogical because it compels petitioner and all other carriers operating under similar facts, to sue for demurrage charges before the amount of the charge can be determined in the event the consignee (as here) retains the trailer beyond three years from its delivery. In fact a suit filed within the three years could be concluded before the full amount due can be ascertained. The decision of the Court of Appeals will make it impossible for the thousands of carriers who comprise the transpor-

tation industry to comply with their obligations imposed by the Interstate Commerce Act and particularly sections 2, 3(1), and 6(7) to sue for and collect all of the charges that are due them, including demurrage charges.

49 U.S.C. 16(3)(a), requires that all actions at law by a carrier brought for the recovery of their charges shall be begun within three years from the time the cause of action accrues and not after.

49 U.S.C. 16(3)(e), establishes that the causes of action in respect of a shipment of property shall be deemed to accrue upon delivery or tender of delivery of the property by the carrier and not after.

Both the District Court and the Court of Appeals construed these two sections to mean that a suit for demurrage charges was one involving a shipment in respect of property and thus the three year statute of limitations began to run against petitioner when petitioner delivered the two semi-trailers to respondent Benchcraft, Inc., in May of 1969. By such calculation the three year statute of limitations expired and petitioner's cause of action was barred in May of 1972.

But the facts show that trailer ELZZ was not released by the consignee until August of 1970 at which time, unbeknownst to petitioner, it was returned to its owner the Erie Lackawanna Railroad. The other trailer was finally released by the consignee in November of 1972 at which time it again came in possession of petitioner. It can be safely assumed that after petitioner delivered these trailers to the consignee in May of 1969 it had simply "lost" them until substantially after May of 1972 when, by the reckoning of the court below, its cause of action for demurrage was barred by the statute of limitations. By such calculation petitioner's last date to have brought suit would have been one day short of the expiration of three years

following delivery of the trailers in May of 1969. But it must be remembered that on that date even though one trailer had been returned to its owner the petitioner did not know it and the other was still in possession of Benchcraft, Inc.

Petitioner's right to impose demurrage charges, and all other charges for that matter, are governed by tariffs filed with and approved by the Interstate Commerce Commission pursuant to the Interstate Commerce Act. The pertinent portions of the applicable tariff here are set forth in the Appendix at page A7. The tariff establishes various daily charges for failure to return a trailer to the carrier after free time has expired. It has been petitioner's contention throughout this litigation that its cause of action for demurrage did not accrue and the statute of limitations did not begin to run until such time as the trailers had been released by the consignee because until that event occurred petitioner had no judicially enforceable cause of action to sue for demurrage charges as is discussed in more detail *infra*.

In the transportation of property by common carrier there are two basic types of charges which are involved. These are freight charges and demurrage charges. The former are charges which the shipper pays to the carrier for the transportation of property from one point to the other. The latter are charges which the shipper pays to the carrier for the failure to return to the carrier the rolling stock of the carrier which was used for the transportation of the property; either semi-trailers, railroad cars or similar equipment. The basic difference between the time when the two types of charges accrue and the date upon which each becomes ascertainable must be considered. Freight charges are fixed in amount. They are predetermined by simple reference to the tariff and can

be fully ascertained before the shipment even takes place. The tariff will provide, for example, that it costs twenty-three cents per hundredweight to ship a certain type of commodity from Kansas City, Missouri to Chicago, Illinois over the lines of certain railroads. Thus only the weight of the commodity being shipped and the origin and destination points need be known. With this information the amount of the freight charge is fully determined and if not paid in full at destination the carrier has all the facts necessary to file suit immediately to collect the balance due.

Not so with demurrage charges. These charges, as explained above, are what the carrier collects from the consignee because of the consignee's failure to return to the carrier the semi-trailer or railroad car after free time expires. Although the daily rate or charge of demurrage on a given type of semi-trailer or railroad car is readily ascertainable from the tariff, the total amount of the demurrage charge which the carrier is entitled to collect from the consignee is not and cannot be determined until the consignee has released the semi-trailer or the railroad car. The charges continue to accrue from day to day and are never fully ascertainable as long as the consignee has continued possession of the rolling stock.

The Interstate Commerce Act in sections 2, 3(1) and 6(7) imposes a very strict obligation upon common carriers to collect from shippers and consignees all charges due the carriers including demurrage charges. Failure to collect such charges as may be justly due is usually considered a preference and a violation of the Elkins Act (49 U.S.C. 6(7)), and is punishable as a crime pursuant to section 10(1).

Under the facts present here the construction placed upon 49 U.S.C. 16(3) by the Court of Appeals made it

impossible for petitioner to comply fully with its obligations to sue for and collect all charges due it. If petitioner had brought suit in May of 1972, just prior to the expiration of three years from delivery of the trailers but when neither trailer had been returned to petitioner and petitioner did not know their whereabouts, what amount would petitioner have sued for? Demurrage was still accruing day by day. Petitioner could have sued for the amount then due but that amount would have changed with each passing day. It is no answer to the problem to say that upon the ultimate return of the trailers petitioner could have amended and sued for the amount further accruing after the suit was commenced. There is nothing in 49 U.S.C. 16(3) which would have authorized the District Court to allow petitioner to sue for demurrage which accrued after the three years from date of delivery had expired. The probable result of the Court of Appeals' opinion is petitioner would have simply been unable to sue for or collect for any demurrage accruing after that initial three year period and respondent Benchcraft, Inc., would have had demurrage-free use of the NWZ trailer for nearly six months. Furthermore, if the suit was filed within three years from date of delivery and the trailer not returned at time of trial it is a certainty that the carrier would lose any demurrage accruing after the trial.

This dilemma of the carrier is readily solved if a suit for demurrage charges is held not to be one involving a shipment in respect of property within the meaning of 49 U.S.C. 16(3)(e) so that the carrier's cause of action for demurrage accrues, not upon delivery of property, but rather upon return of the trailer to the carrier by the consignee. As is pointed out above and discussed in greater detail *infra*, the nature of the demurrage charges is such that they should not be considered to be charges in respect of a shipment of property. Petitioner's contentions as to the ac-

crual of its cause of action are further supported by the simple logic of the situation. If the cause of action for demurrage accrues upon delivery of the property then the statute of limitations is running against petitioner before petitioner has a judicially enforceable cause of action upon which suit may be brought; this is because of the free time provision in the tariff. Obviously no demurrage is due until free time has expired. This point too is discussed in greater detail *infra*.

2. The decision of the Court of Appeals conflicts with the only controlling decision of this Court, *United States* v. *Interstate Commerce Commission*, 246 U.S. 638, 38 S.Ct. 408, 62 L.Ed. 914 (1918), which holds that a cause of action for charges due under the Interstate Commerce Act does not accrue and the statute of limitations applicable thereto does not begin to run until the cause of action is judicially enforceable. The decision of the Court of Appeals holds that a suit for demurrage charges is one involving a shipment in respect of property, thereby causing the cause of action to accrue on delivery of the property. Such interpretation of the statute commences running of the period of limitation before free time expires and before petitioner had a judicially enforceable cause of action.

The historical development of §16(3) and its predecessors is set out in *United States* v. *Interstate Commerce Commission, supra*. In that case the action originally was a shipper's action to recover overcharges. There the relator-shipper had paid certain overcharges by reason of a mistake in the tariff and it filed a complaint with the Commission to recover them. The Commission ruled that the cause of action accrued upon delivery of the property and the action was barred because it was commenced more than two years after such delivery. This Court reversed and held that the relator's cause of action could not have

accrued when the property was delivered, as decided by the Commission, because relator then had not paid the overcharges and then could not have instituted a complaint with the Commission to recover the overcharges. This being the case, this Court reasoned and held, the cause of action could not have accrued, and the statute of limitations could not have begun to run until the charges were paid since it was at that moment that a suit for the overpayment could have been instituted and not before.

While neither the statute in question nor the decision of this Court is concerned with an action at law brought by a carrier against a shipper to recover charges, the principle is the same. Thus in *United States* v. *Interstate Commerce Commission,* this Court declined to follow the Commission's interpretation of the statute and held that the cause of action accrued when the property was delivered. To do so under the facts present would have commenced running of the statute of limitations before there was a judicially enforceable right on which the shipper could have sued.

That case provides a rule of statutory interpretation that the cause of action accrues and the statute of limitations begins to run only at such time as the plaintiff may legally institute a suit for recovery of the money damages. As discussed *infra,* such rule can and should be applied to all of the three shipper-carrier causes of action contemplated by §16(3) to produce the uniformity of result which is the underlying principle of the Interstate Commerce Act.

In 1920 §16(3) was amended to provide for the first time a statute of limitations upon a carrier's action for the recovery of its charges and also to provide that the cause of action in respect of a shipment of property accrued upon delivery or tender of delivery thereof by the carrier. The statute as enacted in 1920 is set out in the Appendix at

page A9. The provision with respect to the accrual of the cause of action was only a Congressional codification of pre-1920 Commission decisions which held that the cause of action accrued when the property was delivered. This being so, the pre-1920 decisions of this Court construing and limiting that language should have equal application to the same words as used in the statute.

Therefore, prior to 1920 this Court had declined to say that the cause of action accrued when the property was delivered in an overcharge case where the overcharges were not paid until much later. Instead, this Court held that the cause of action for overcharges did not accrue and the statute of limitations did not begin to run until such overcharges had been paid because until that time the shipper could not legally file a suit to recover them. What effect then did the 1920 and 1924 amendments have which, *inter alia,* merely codified the same language which this Court construed in *United States* v. *Interstate Commerce Commission, supra.* Did this statutory addition mean that in a shipper's suit for overcharges that the cause of action accrued and the statute of limitations began to run when the property was delivered notwithstanding the fact that the shipper may not have paid the overcharges until some months later? Or did it mean that in a carrier's suit for demurrage charges, the cause of action accrued and the statute of limitations began to run when the trailer or railroad car was delivered to the consignee notwithstanding the fact that no demurrage was then due and would not become due until such time as the permissible free time provided for in the tariff had expired?

There is nothing about the addition of subsection (e) to §16(3) which should change the rule enunciated by this Court in *United States* v. *Interstate Commerce Commission, supra.* But if subsection (e) does mean that a demurrage

cause of action accrues on delivery of the property then by the same reasoning so does a shipper's overcharge claim even if the overcharges have not been paid.

If both a shipper's cause of action for overcharges not yet paid and a carrier's cause of action for demurrage not yet chargeable because of the non-expiration of free time are deemed to accrue upon delivery of the property by reason of subsection (e), then the effect of such legislation is to reverse this Court's decision in *United States* v. *Interstate Commerce Commission, supra.*

Not since the 1920 and 1924 amendments to Section 16(3) of the Act has this Court had an occasion to speak on the subject. In the more than 50 intervening years this Court has not rendered a decision generally dealing with the effect of the enactment of subsection (e) on any of the three causes of action contemplated by subsections (a), (b) and (c) of §16(3) of Title 49. Specifically, this Court has never decided whether or not the causes of action referred to herein are indeed shipments in respect of property within the meaning of that statute so a cause of action therefor accrues upon delivery or tender of delivery of the property by the carrier.

3. The decision of the United States Court of Appeals for the Eighth Circuit in its construction and application of 49 U.S.C. 16(3)(e) to a suit for demurrage charges is in conflict with decision of other Courts of Appeals, District Courts and those of the Interstate Commerce Commission.

The decision of the United States Court of Appeals, adopting the District Court opinion as it does, expressly holds that petitioner's cause of action here for demurrage charges accrued on the date the trailers were delivered to respondent, Benchcraft, Inc., and that the statute of limitations began to run on that date. Applying that ruling

to the facts here present means that petitioner's cause of action accrued at the instant of delivery and before free time provided for in the tariff had expired. The statute of limitations was running against petitioner's cause of action at a time significantly before there was any demurrage due petitioner and of necessity at a time before petitioner had any suit it could file to enforce its right.

It is equally clear here from the opinions of the District Court and the Court of Appeals that those courts regard all actions by carriers for any charges to fall within the ambit of §16(3)(e) as being shipments in respect of property so that the cause of action accrues and the statute of limitations begins to run upon delivery of the car or trailer irrespective of the nature of the charge.

In precise accord with the decision of the District Court and the Court of Appeals here is *Baker* v. *Chamberlain Mfg. Corp.*, 356 F.Supp. 1314 (D.C. N.D. Ill. 1973). This was a decision on which respondents principally relied below and presumably afforded the major basis for the decision of the District Court and Court of Appeals here. That decision is plainly wrong and the granting of the writ here can likewise afford this Court an opportunity to overrule it.

At the outset petitioner shows this Court that the decision of the Court of Appeals in this case is in direct conflict with three decisions of the Interstate Commerce Commission. These decisions are *Coal Corp. of America* v. *New York Central RR. Co.*, 203 I.C.C. 755 (1934), *Scranton and Lehigh Coal Co.* v. *Lehigh Valley R.R. Co.*, I.C.C. Unreported Op. A-459 and *Chazen* v. *Alabama G.S.R. Co.*, 296 I.C.C. 379 (1955). All the decisions hold that the cause of action for demurrage accrues upon release of the railroad car.

By holding that the cause of action for demurrage charges does not accrue until the cars or trailers are released, the Commission has brought itself in line with this Court's ruling in *United States* v. *Interstate Commerce Commission, supra.* This is so because the Commission's ruling means that the demurrage cause of action accrues only when there is a fully ascertained and judicially enforceable right on which suit can be brought.

Consistent with the foregoing holdings of the Commission and in conflict with the decision of the District Court and the Court of Appeals here is the decision of the Court of Appeals for the Fifth Circuit in *Arkansas Oak Flooring Co.* v. *Louisiana and Arkansas Ry. Co.*, 166 F.2d 98 (5th Cir. 1948), *cert. den.* 334 U.S. 828, 68 S.Ct. 1338, 92 L.Ed. 1756 (1948). There the shipper had shipped lumber under a transit rate tariff providing a low rate but conditioned upon his reshipping the same lumber within a year and if this was not done a higher rate applied. The shipper did not reship the lumber and more than two years after the original shipment was made the railroad sued to collect the higher rate. The shipper pleaded the statute of limitations (then being two years instead of three) contained in 49 U.S.C. 16(3)(a) and urged that the cause of action accrued on the original delivery of the lumber to the factory. Conversely the railroad urged that its cause of action could not have accrued upon delivery of the property since the shipper had a full year in which to reship the property and there was nothing on which the railroad could sue at the time the property was delivered. The Fifth Circuit agreed holding that this was not a shipment in respect of property within the meaning of §16(3)(e) because to so construe that section would require a holding that the cause of action accrued and the statute of limitations began to run at a time

which was a full year prior to the time the railroad could have instituted a suit against the shipper.

Opinions of District Courts from several different districts have held in various suits that not all actions brought by carriers for their charges are deemed shipments in respect of property and consequently §16(3)(e) has no application to them. Because the decision of the Court of Appeals here has implicit in it that any action by a carrier for any of its charges is a shipment in respect of property these decisions conflict with that of the Court of Appeals.

For example, in *Chicago, Rock Island and Pacific Ry. Co.* v. *Petroleum Refining Co.*, 39 F.2d 629 (D.C. E.D. Ky. 1930), the court held a railroad's action to recover charges due it for the movement of empty tank cars was not a cause of action in respect of a shipment of property within the meaning of 49 U.S.C. 16(3)(e).

Also in conflict with the principle of the decision of the Court of Appeals in this case is the decision of the Court of Appeals for the Fifth Circuit in *Missouri Pacific R.R. Co.* v. *Austin*, 292 F.2d 415 (5th Cir. 1961). Plaintiff shippers brought an action to enforce an overcharge reparation award granted them by the Commission. The shipments occurred in 1952. The Commission ordered the carrier to pay the shipper the full amount of the reparation on or before September 27, 1955. The order was issued on July 25, 1955. Suit to enforce the order was instituted Sepember 27, 1956, which was within one year of the date required for payment by the order but more than a year from the date of the order itself. The carrier pleaded the statute of limitations relying on §16(3)(f) which requires that such a suit for the enforcement of a reparation order shall be filed "within one year from the date of the order, and not after." The Fifth Circuit held that the suit had been timely filed

and said that the literal words of subsection (f) should not be applied and that literalism as an approach to statutory construction was at best far from decisive. The Court went on to hold that it was the obvious intent of Congress that the person obtaining the award have a year in which to secure its enforcement through the courts and that this purpose would be frustrated if the year was measured from the date the order was entered rather than the date on which the carrier was compelled to pay. Since the carrier was compelled to pay, not on the date of the order but on a subsequent date fixed therein, the court concluded:

> "No right of judicial action having come into being prior to that time, the one year period commenced on that date. That is the 'date of the order.' " (l.c. 419)

Here the decision of the court was keyed to the basic rule decided by this Court in *United States* v. *Interstate Commerce Commission, supra,* although this Court's decision there was not specifically cited. Simply put, the cause of action does not accrue and the statute of limitations does not begin to run until such time as a suit could be filed to enforce that cause of action. The *Missouri Pacific* case so holds and is consistent with this Court's ruling in *United States* v. *Interstate Commerce Commission, supra;* consequently it conflicts with the decision of the United States Court of Appeals for the Eighth Circuit in the instant case.

4. Section 16(3) also provides a statute of limitations for all three of the distinctly separate causes of actions in the context of carrier/shipper relations and as to which the statute of limitations begins to run upon accrual of the cause of action. A decision on the precise question here will also clarify and make certain when such other causes of action accrue and when the statute of limitations applicable to each begins to accrue.

The three separate causes of action for which §16(3) establishes a statute of limitations and to which subsection (e) may apply, are contained, respectively, in subsections (a), (b), and (c). Subsection (a), directly involved here, is directed toward actions brought by carriers for recovery of their charges and requires that the action shall be commenced within three years from the time the cause of action accrues. Similarly, since subsection (b) deals with complaints against carriers by shippers for damages other than overcharges and requires that they be filed with the Commission within two years from the time the cause of action accrues. Subsection (c) is concerned with actions by shippers for overcharges and requires that either an action at law or a complaint be filed with the Commission within three years from the time the cause of action accrues with an exception not here applicable.

The precise question presented to the Court in this case directly involves only subsections (a) and (e) of §16(3) of Title 49. But §16(3) in totality is a general statute of limitations section and provides a specific statute of limitations for each of three distinctly separate causes of action in the area of carrier/shipper dealings. A decision by this Court on the precise issue presented would of necessity and as is herein demonstrated determine when each such cause of action accrues and when the statute of limitations applicable thereto begins to run.

In subsections (a), (b) and (c), the statute of limitations is deemed to begin running from the time the cause of action accrues. Subsection (e), likewise herein directly involved, provides "the cause of action in respect to a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after." In deciding the central

issue in this litigation, whether or not a suit by a carrier for demurrage charges is one involving a shipment in respect of property, this Court can likewise determine whether or not subsection (e) is to be literally applied to the three causes of action contemplated by subsections (a), (b) and (c).

Notable among this Court's more recent decisions construing sections of the Interstate Commerce Act is *Missouri Pacific Railroad Co.* v. *Elmore & Stahl*, 377 U.S. 134, 84 S.Ct. 1142, 12 L. Ed.2d 194 (1964), *rehearing denied*, 377 U.S. 984, 84 S.Ct. 1880, 12 L. Ed.2d 752 (1964). In that case this Court granted certiorari to review a lower court decision construing the Carmack Amendment of 1906 to the Interstate Commerce Act, 49 U.S.C. 20(11). That section renders carriers liable for "the full actual loss, damage or injuries - - - caused by" them to property they are transporting. That case dealt solely with the cause of action contemplated by §16(3)(b), a shipper's suit for damages other than overcharges. This Court concluded that a decision on that narrow issue was sufficiently important to warrant granting the writ. This application presents a question of more importance and provides a greater reason for the granting of the writ than that involved in *Elmore & Stahl* because a decision here would clarify all of the questions of when the statute of limitations begins to run on the three causes of action contemplated by 49 U.S.C. 16(3) (a), (b), and (c).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

C. GEORGE NIEBANK, JR.
General Counsel
80 East Jackson Boulevard
Chicago, Illinois 60604

DANIEL M. DIBBLE
1500 TenMain Center
Kansas City, Missouri 64105
842-0820

Attorneys for Petitioner

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

No. 73 CV 441-W-2

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Plaintiff,

vs.

BENCHCRAFT, INC.,
Defendant and Third-Party Plaintiff,

vs.

DELIVERY, INC., and CAPITOL TRUCK LINES, INC.,
Third-Party Defendants.

MEMORANDUM AND ORDER GRANTING DEFENDANT AND THIRD-PARTY DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT

(Filed April 4, 1974)

This is an action to recover demurrage charges for excess detention of two trailers. Defendant and third-party defendants jointly have moved the Court for summary judgment. The motion will be granted.

The motion is based on the facts alleged in plaintiff's complaint and plaintiff's answers to certain interrogatories. On May 2, 1969, plaintiff delivered two trailers to defendant. The trailers were numbered NWZ 209790 and ELZZ 202044 and were owned by two other railroads. The trailers had been shipped from Canton, Ohio, to Kansas City, Missouri, partially over plaintiff's railroad. Trailer NWZ was returned to plaintiff on November 2 or 7, 1972; demurrage charges at that time amounted to over $14,000. Trailer ELZZ was returned to its owner on August 5, 1970; demurrage charges at that time amounted to over $5,000. This action was commenced on August 8, 1973.

Movants submit that plaintiff's action is barred by 49 U.S.C. § 16(3)(a) and (e) (1970). Subsection 16(3)(a) provides:

> All actions at law by carriers subject to this chapter for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

Subsection 16(3)(e) provides:

> The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

Since this action was commenced over three years after delivery of the trailers to defendant, if demurrage charges are "charges" within the meaning of subsection 16(3)(a), and if this is an action "in respect of a shipment of property" within the meaning of subsection 16(3)(e), then plaintiff's action is barred.

Three courts have addressed the questions suggested. All three have ruled that demurrage charges are "charges"

within the meaning of subsection 16(3)(a), that an action to recover demurrage charges is an action "in respect of a shipment of property" within the meaning of subsection 16(3)(e), and that an action commenced after the statute's time limitation is barred. *Pennsylvania R.R.* v. *Carolina Portland Cement Co.*, 16 F.2d 760 (4th Cir. 1927); *Baker* v. *Charberlain Mfg. Corp.*, 356 F. Supp. 1314 (N.D. Ill. 1973); *Chesapeake & O. Ry.* v. *Wiener*, 336 Mich. 548, 58 N.W.2d 918 (1953). The Court has read carefully each of these decisions and we believe that they are entirely correct.

The phrase "in respect of a shipment of property" does not limit subsection 16(3)(e) to actions which arise out of the actual moving of the property as distinguished from charges for storage and demurrage. The term "shipment" includes "the property which is the subject of transportation as well as the transportation itself." *Pennsylvania R.R.* v. *Carolina Portland Cement Co., supra* at 761. It is of no matter that part of the demurrage charges may have been incurred within three years preceding commencement of this action. The three years' limitation is measured forward from the time of delivery and not backward from the commencement of the action.

Subsection 16(3)(e) is contrary to all judicial concepts of when a cause of action accrues. It is indeed strange to think that the statute of limitations for this action began to run before any demurrage charges were incurred. Strange as it may be, that is the law. It is based on sound congressional policy: "uniformity and equality of treatment, as between carrier and shipper." *Midstate Horticultural Co., Inc.* v. *Pennsylvania R.R.*, 320 U.S. 356, 361 (1943); *Baker* v. *Chamberlain Mfg. Corp., supra* at 1317. Congress simply has discarded traditional judicial concepts

"in favor of the § 16(3)(e) uniform statutory period of delivery as the start of the limitation period." *Baker* v. *Chamberlain Mfg. Corp., supra* at 1317.

Since this action was commenced more than three years after the delivery of the trailers to defendant, the action is barred. It is therefore

ORDERED that defendant and third-party defendant's motion for summary judgment be, and hereby is, granted.

/s/ Wm. R. Collinson
District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 74-1315

The Atchison, Topeka & Santa Fe Railway Company,
Appellants,

v.

Benchcraft, Inc., Delivery, Inc. and Capitol Truck Lines, Inc.,
Appellees.

Appeal from the United States District Court for the Western District of Missouri.

Submitted: September 13, 1974
Filed: September 30, 1974
Rehearing Denied: October 16, 1974

BEFORE Vogel, Senior Circuit Judge, Ross and Webster, Circuit Judges.

PER CURIAM.

Summary judgment in favor of Benchcraft, Inc., Delivery, Inc. and Capitol Truck Lines, Inc. is affirmed on

the basis of the opinion of the District Court. (*Atchison, Topeka & Santa Fe Railway Co.* v. *Benchcraft, Inc.*, 381 F. Supp. 603 (W.D. Mo. 1974)). Judge Collinson has accurately stated the applicable law and has properly applied the law to the facts. No purpose would be served in attempting to elaborate on his well considered opinion.

Affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX C

TARIFF 453-E

RULES AND OTHER GOVERNING PROVISIONS
SPECIAL RULES AND REGULATIONS—UNLIMITED

ITEM	SUBJECT	APPLICATION

FREE TIME

Except as otherwise specifically provided, when, due to no disability, fault or negligence on the part of the carrier, the loading or unloading of freight is delayed and carrier's equipment detained at point of actual or constructive placement, the following rules shall govern:

Free Time for the loading or unloading of freight will be as follows:

(a) Except as otherwise provided herein 10 hours free time will be allowed for the loading or unloading of each vehicle actually or constructively placed.

(b) When vehicles are actually placed prior to 7:00 A.M. of any day, Monday to Friday, inclusive, free time shall begin at 7:00 A.M. of such day.

(c) When vehicles are actually placed after 5:00 P.M. of any day; Monday to Friday, inclusive, free time shall begin at 7:00 A.M. of the following day, except as provided in Paragraph (f).

(d) When vehicles are actually or constructively placed on a Saturday or Sunday free time shall begin at 7:00 A.M. of the following Monday, except as provided in Paragraph (f).

(e) When any portion of the free time provided in Paragraph (a) of this item extends beyond 5:00 P.M. of any day, Monday to Friday, inclusive, such portion of free time shall be computed from 7:00 A.M. of the next day which is neither a holiday, nor a Saturday or Sunday.

(f) Free time shall not begin on a Saturday, Sunday or holiday observed at point of placement, but at 7:00 A.M. of the next day which is neither a holiday nor a Saturday or Sunday.

(g) When two vehicles or multiples of two vehicles are received at one destination for one consignee on one day on one bill of lading, free time as provided in Paragraph (a) will be

allowed for unloading each vehicle and an additional 24 hours free time will be allowed for unloading of 50 per cent of the vehicles. In the event single vehicle is included along with two vehicles or multiples of two vehicles, only free time as provided in Paragraph (a) will be allowed for unloading said single vehicle.

DETENTION OF VEHICLES.

(h) Applies only in connection with shipments moving on rates designated as applicable to "Freight, all kinds". When two vehicles or multiples of two vehicles are furnished at one origin for one consignor for movement on one day on one bill of lading, free time as provided in Paragraph (a) will be allowed for loading each vehicle and an additional 24 hours free time will be allowed for loading 50 per cent of the vehicles. In the event single vehicle is included along with two vehicles or multiples of two vehicles, only free time as provided in Paragraph (a) will be allowed for loading said single vehicle.

CHARGES

After the expiration of free time prescribed in item 260 Detention Charges will be assessed as follows:

(a) For the first twenty-four (24) hours or fraction thereof, [(1) $8.00 (2) $14.00] per vehicle (including Saturdays, Sundays and holidays).

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(b) For the second twenty-four (24) hours or fraction thereof, [(1) $12.00 (2) $21.00] per vehicle (including Saturdays, Sundays and holidays).

(c) For the third and each succeeding twenty-four (24) hours or fraction thereof, [(1) $16.00 (2) $28.00] per vehicle (including Saturdays, Sundays and holidays).

(1) Applies only on trailers not equipped with mechanical refrigerating devices.

(2) Applies only on trailers equipped with mechanical refrigerating devices.

UNLOADING AND RELOADING

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When a vehicle is both unloaded and reloaded, each transaction will be treated as independent of the other, except that when loading is begun before unloading is completed, free time for loading shall not begin until free time for unloading has elapsed.

APPENDIX D

Transportation Act of 1920, 66th Congress, Ch. 91, §424(3), 41 Stat. 491.

> All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two years or within ninety days before such expiration, begins an action for recovery of charges in respect of the same service, in which case such period of two years shall be extended to and including ninety days from the time such action by the carrier is begun. In either case the cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after. A petition for the enforcement of an order for the payment of money shall be filed in the district court or State court within one year from the date of the order, and not after. (41 Stat. 491)

SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
JAN 16 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-797

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,

Petitioner,

vs.

BENCHCRAFT, INC., DELIVERY, INC., and CAPITOL TRUCK LINES, INC.,

Respondents.

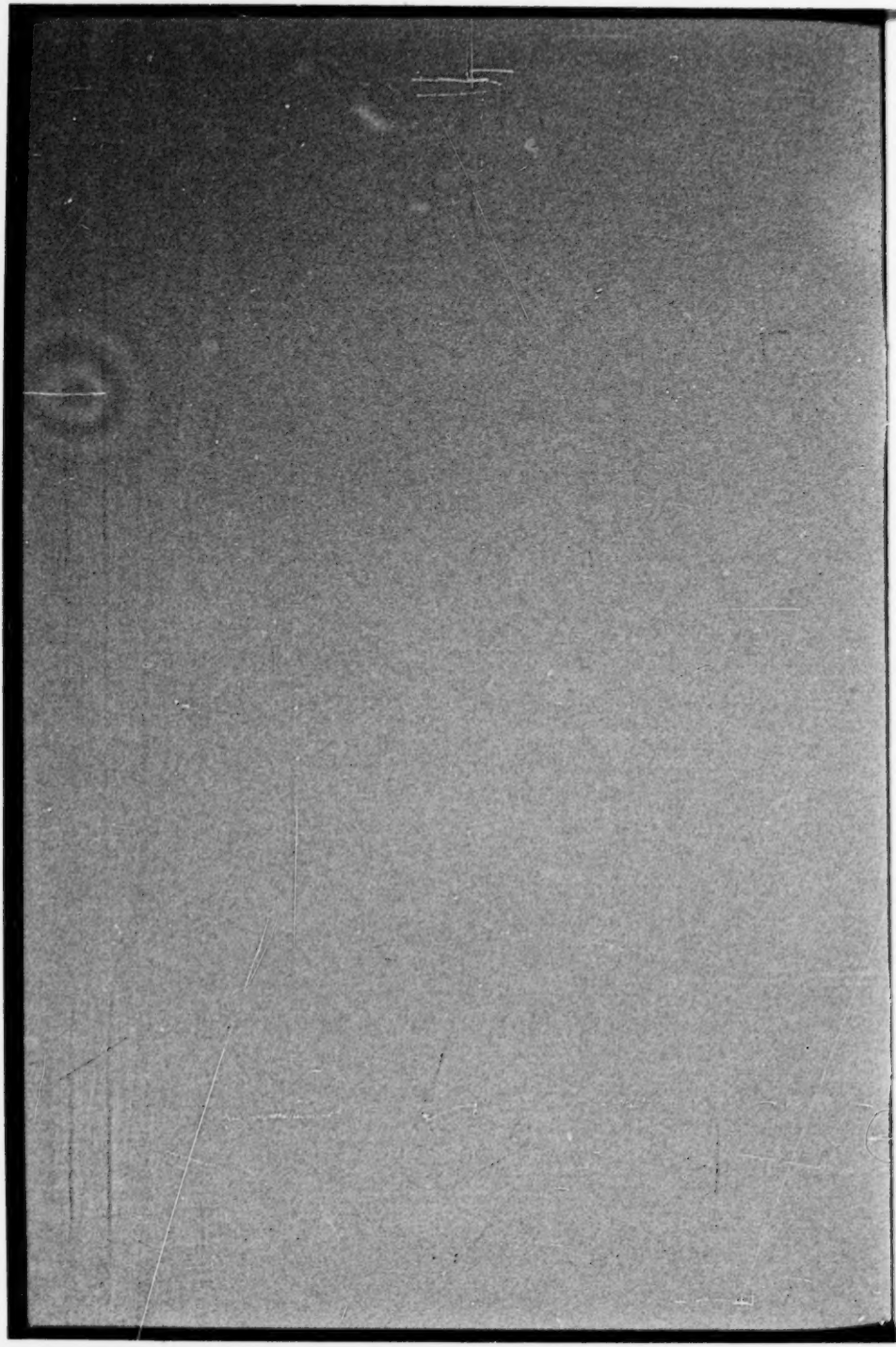
RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

GEORGE L. GISLER
2727 Commerce Tower
911 Main
Kansas City, Missouri 64105
221-8030

MORRISON, HECKER, CURTIS, KUDER & PARRISH
WILLIAM H. CURTIS
1700 Bryant Building
1102 Grand Avenue
Kansas City, Missouri 64106
842-5910

DONALDSON AND LAY
HOWARD D. LAY
Suite 1100, 906 Grand Avenue
Kansas City, Missouri 64106
471-1747

Attorneys for Respondents



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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-797

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,

Petitioner,

vs.

BENCHCRAFT, INC., DELIVERY, INC., and CAPITOL TRUCK LINES, INC.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

STATEMENT OF THE CASE

Respondents are in substantial agreement with the statement of the case set forth in petitioner's brief, but believe the following additional facts are pertinent:

Trailer ELZZ was released and returned to its owner on August 15, 1970. Petitioner first sent statements to respondent Benchcraft for detention charges on the two trailers on February 20, 1973, at which time both trailers had been returned to petitioner or the owners of the trailers. Trailer NWZ was owned by General Transport, Inc. and leased to Northwestern Railroad. Petitioner's correspondence furnished in response to interrogatories indi-

cates that petitioner knew as early as November, 1972, that Northwestern, lessee of Trailer NWZ had paid the owner $3,600 for the depreciated value of the trailer when the trailer could not be found. Petitioner filed suit on August 8, 1973.

REASONS FOR DENYING THE WRIT

1. The decision of the United States District Court, as affirmed by the Court of Appeals, correctly applied the Act of Congress involved herein.

2. The section of the Act involved herein, 49 U.S.C. 16(3), is clear and unambiguous and courts, in applying this statute of limitations, have effected the intent of Congress.

3. This case does not present a question deserving of the attention of this Court. It is obvious from the statement of facts that few cases have arisen involving the issue here because most carriers will promptly bill for accrued demurrage charges and will seek return of their equipment in a time well within the three-year statutory period prescribed by Congress. To adopt petitioner's theory would reward the dilatory. If equipment is not returned in three years, carriers should sue for demurrage then accrued and for conversion.

4. There is no conflict between the decision of the Court of Appeals in this case and any other decision of a Court of Appeals concerned with 49 U.S.C. 16(3)(a) and (e). While the decision of the Court of Appeals may seem to be at odds with the decision of this Court in *United States* v. *Interstate Commerce Commission*, 246 U.S. 638, 38 S.Ct. 408, 62 L.Ed. 914 (1918), the present subsection (e) of 49 U.S.C. 16(3), was not added to the Act until

two years subsequent to *United States* v. *Interstate Commerce Commission, supra,* that is, in 1920. As petitioner correctly states, that decision reversed a Commission ruling that a shipper's cause of action accrued upon delivery of the property and held that the cause of action could not have accrued, nor the statute of limitations begun to run until a suit for the overpayment could have been instituted under the law as then written.

There can be little argument with the fact that, in general, a cause of action is deemed to accrue when a suit may first be legally instituted upon it. *United States* v. *Interstate Commerce Commission,* 246 U.S. at 644. The District Court acknowledged that such is the general rule but recognized that "Congress simply has discarded traditional judicial concepts" to effect the purpose of the Act. *Atchison, Topeka and Santa Fe Railway Company* v. *Benchcraft, Inc.,* 381 F.Supp. 603, 605 (W.D. Mo. 1974). Moreover, this Court in *United States* v. *Interstate Commerce Commission* expressly acknowledged that Congress could provide that the cause of action should accrue when the shipment was delivered by the carrier.

> [I]f Congress had intended that the cause of action of the shipper to recover damages for unreasonable charges should accrue when the shipment was received, or when it was delivered by the carrier, we cannot doubt that a simple and obvious form for expressing that intention would have been used, instead of the expression "from the time the cause of action accrues." (246 U.S. at 644).

The Court was inviting the Congress to change the Act if Congress intended for the cause of action to accrue at a time inconsistent with traditional judicial principles. Two years later, in 1920, Congress did just that by amending

the statute and adding subsection (3)(e), in simple, obvious and clear language for establishing a uniform period of application for the statute of limitation contained in the Act and adopting the theory which the I.C.C. had felt desirable in these cases.

Petitioner's notion that *United States* v. *Interstate Commerce Commission* correctly states the law despite the subsequent enactment of Section 16(3)(e) is illogical and incorrect. Thus, there is no conflict between the decision of the Court of Appeals in this case and *United States* v. *Interstate Commerce Commission* because the substantive statutory law under consideration in the two cases was entirely different.

Neither is the decision of the Court of Appeals, below, in conflict with the decisions of the Interstate Commerce Commission cited by petitioner. *Coal Corp. of America* v. *New York Central R.R. Co.*, 203 I.C.C. 755 (1934), provides no basis from which it can be said that it conflicts with the holding of the Eighth Circuit in this case. That decision appears to be concerned with demurrage charges accruing from the release of rail cars. The release date was not the return to the shipper but when a ship "reported ready for loading." The demurrage rules involved therein deal with docking delays of ships. Nowhere is there reference, either implicit or explicit, to Section 16(3). The only reference to accrual of the cause of action is the gratuitous statement that the cause of action accrued on November 28, 1929, the date on which the cars were released. The holding of the opinion does not involve any issue relating to the timeliness of the action. The opinion did not consider the issues involved in this matter.

Similarly, *Chazen* v. *Alabama G.S.R. Co.*, 296 I.C.C. 379 (1955), is not in point. Even under the Commission's own determination of the accrual of the cause of action,

the statute of limitations had run at the time the complaint was filed with the Commission. Thus, *Chazen* provides no authority for the resolution of the matter at issue in this case.

Arkansas Oak Flooring Co. v. *Louisiana and Arkansas Railway Company,* 166 F.2d 98 (5th Cir. 1948), cert. den. 534 U.S. 828, 66 S.Ct. 1338, 92 L.Ed. 1756 (1948), was recognized in the opinion of the District Court in *South Omaha Terminal Railway Company, Inc.* v. *Armour and Company, Inc.,* 373 F.Supp. 641 (D.Neb. 1974) is not applicable. In the *Arkansas* case the Court held that the applicable *rate* cannot be determined until the end of a given time period. The Nebraska District Court quoted extensively from *Baker* v. *Chamberlain Mfg. Corp.,* 356 F.Supp. 1314 (N.D. Ill. 1973), a case which is precisely in point and which was relied on by the District Judge in sustaining the motion for summary judgment herein which was affirmed by the Eighth Circuit.

In *Baker,* the plaintiff sought demurrage charges for cars delivered by plaintiff in April and May of 1969, the last shipment having been delivered on May 23, 1969, and the car released on May 27, 1969. Suit was filed on May 31, 1972. However, the parties to the suit were subject to a "Monthly Average Demurrage" tariff whereby credits earned on cars released prior to the expiration of free time during a month could be used on the last day of the month to offset debits incurred on cars released *after* the expiration of free time during the same month. The plaintiff had argued that the demurrage did not accrue until the last day of the month and therefore, the statute of limitations contained in 16(3)(a) and (e) could not begin to run until then because it was only then that the charges became collectible.

The District Court in *Baker* referred to the policy of the Interstate Commerce Act, as expressed by this Court in *Midstate Horticultural Co., Inc.* v. *Pennsylvania Railroad Co.*, 320 U.S. 356, 64 S.Ct. 128, 88 L.Ed. 96 (1943), where this Court stated:

> . . . Section 16 expresses the specific policy of the Act with reference to the assertion of stale claims. On the section's face, this policy is one of uniformity and equality of treatment, as between carrier and shipper. (320 U.S. at 361).

The District Court held that where a "Monthly Average Demurrage Plan" is used the statute of limitations begins to run from the time of delivery.

Petitioner in this case does not even have an average monthly demurrage plan to rely upon to come within the applicable limitation period. Rather, petitioner contends that no charges could become due and collectible until the trailers were returned. This simply means that the consignee of the equipment can defeat recovery by never returning the carrier's equipment. The opportunities for discrimination in this theory are abundant and are clearly contrary to the policy of the Act recognized by this Court.

Tne Court in *Baker*, citing *Chicago & N.W.R. Co.* v. *Connor Lumber & Land Co.*, 212 F.2d 712 (7th Cir. 1954), determined that *Arkansas Oak* was distinguishable because it was a transit rate case with "a unique set of circumstances not readily analogous to demurrage cases." (356 F.Supp. at 1319). The District Court further stated that the rate in *Arkansas Oak* could not be determined until the end of the year within which the goods might be reshipped in an improved form. Under the average monthly demurrage plan, similar to the straight demurrage plan in issue here, the amount of charges was determinable at any

given point in time after the expiration of free time. The Court further stated:

> Plaintiff's major error lies in its misconstruing of the terms "accrue" and "come due" at least for the purposes of §16(3)(e). The statute is explicit that accrual under §16(3)(e) is not synonymous or mutually interchangeable with collectibility or dueness of the debt and that the point of delivery overrides any conventional motion of when an action judicially matures. *Indeed if the statute had meant to adhere to the general standards of allowing the statute of limitations to run from the point when the action could have been brought then §16(3)(e) would have been totally superfluous.* It is therefore clear that Congress anticipated the multitude of variations in periods of limitations that would result if conventional standards of triggering the period were used and promulgated §16(3)(a) and (e) in order to avoid such variation by creating a uniform time of accrual irrespective of when the action could have generally been brought. (356 F.Supp. at 1321) (Emphasis ours).

There should be little doubt but that demurrage charges are within the meaning of "in respect of a shipment of property" as stated in Section 16(3)(e) and the District Judge specifically so found. See *Pennsylvania R. Co.* v. *Carolina Portland Cement Co.*, 16 F.2d 760 (4th Cir. 1927) and *Chesapeake & O. Ry. Co.* v. *Wiener*, 58 N.W.2d 918 (Mich. 1953). *Chicago, R.I. & P. Ry. Co.* v. *Petroleum Refining Co.*, 39 F.2d 629 (E.D. Ky. 1930), is factually distinguishable because the case involved only the movement of empty tank cars. Therefore, the Court could reasonably find that there was no shipment of property so as to bring a claim for excess empty mileage within the ambit of Section 16(3)(a) and (e). *Missouri Pacific R.R. Co.* v.

Austin, 292 F.2d 415 (5th Cir. 1961), cited by petitioner, does not discuss nor do the facts of the case relate it to Section 16(3)(e). It is not relevant to a determination of the issues involved in this action.

The decision below does not deny a remedy to a carrier which is prompt in billing for demurrage and in seeking return of its equipment. The carrier can within the appropriate limitations period sue for demurrage and for conversion if the trailers are not returned. Petitioner did not sue for conversion in this case because the trailers were returned long before Santa Fe apparently discovered that demurrage charges were due or that the trailers had been returned. Here more than four years elapsed before petitioner sought to assert its rights. It cannot now be heard to complain.

The statutes of limitation applicable to shipments in interstate commerce are uniformly short. The policy of the Act is to prevent discrimination and to require prompt collection of charges. Petitioner's theory would reward the dilatory.

CONCLUSION

The decisions of courts under this statute find the statute clear and unambiguous. The decision below followed the ruling of all the cases that are in point. These cases have followed the clear language of the statute and the policy of Congress. Petitioner asserts no valid ground for doing otherwise. These are neither special nor important reasons for the Court to exercise its discretion in reviewing the decision of the Court of Appeals for the Eighth Circuit on Certiorari. As has been set forth above, the decision of the Court of Appeals does not conflict with the decision of another Court of Appeals on the same matter and the law

on this question is well settled and is consistent with the applicable decision of this Court. This case does not present a question deserving of the attention of this Court and the petition should be denied.

Respectfully submitted,

GEORGE L. GISLER
2727 Commerce Tower
911 Main
Kansas City, Missouri 64105
221-8030

MORRISON, HECKER, CURTIS, KUDER & PARRISH
WILLIAM H. CURTIS
1700 Bryant Building
1102 Grand Avenue
Kansas City, Missouri 64106
842-5910

DONALDSON AND LAY
HOWARD D. LAY
Suite 1100, 906 Grand Avenue
Kansas City, Missouri 64106
471-1747

Attorneys for Respondents